

\$~5

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment delivered on: 23.10.2020

+ CM(M) 531/2020

PARAS RAM

..... Petitioner

versus

SURENDER SINGH & ORS.

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. Abhimanyu, Advocate.

For the Respondents: None.

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

**CM APPL.27385/2020 (exemption)**

Exemption is allowed subject to all just exceptions.

**CM(M) 531/2020 & CM APPL.27384/2020 (stay) & CM APPL.27386/2020 (stay)**

1. The hearing was conducted through video conferencing.
2. Petitioner impugns order dated 25.08.2020, whereby, the Trial Court has declined to issue summons in the suit and held that a

simplicitor suit for injunction is not maintainable and an opportunity has been granted to the petitioner to amend the suit.

3. No notice has been issued to the respondents since they are yet to be summoned in the Suit and the subject order has been passed at the pre summons stage.

4. Learned counsel for the petitioner contends that the Trial Court has erred in holding that in the plaint it is stated that Plot No.55 was illegally possessed by defendants by erecting a wall and separating the two plots and further putting a gate at plot gate No.55.

5. It is contended that nowhere in the plaint there is such an allegation. In fact in the plaint the allegation is that the defendants/respondents sought to disturb the possession of the plaintiff by demolishing the wall built by him. He submits that in the plaint it is categorically stated that the possession was of the plaintiff/petitioner and respondents were attempting to disturb the same.

6. Learned counsel for the petitioner submits that in the facts and circumstances of the case, a simplicitor suit for injunction would be maintainable as there is no dispute qua the title of the petitioner.

7. I have perused the plaint. In the plaint it is contended that the petitioner is the owner of the subject property which is surrendered by a boundary wall and the said plot came to the share of the petitioner in terms of a family settlement/partition deed dated 11.04.1999.

8. It is contended in the plaint that the defendant No.1, who is a police officer, along with his sons came to the house of the petitioner and threatened to dispossess him. Thereafter, it is alleged that they attempted to demolish the wall in between the plot Nos.55 and 56.

9. Perusal of the plaint shows that though it is mentioned in paragraph 8 that the respondent had constructed a Wall separating the plot No.55 and 56, thereafter, a complaint was made to the police and after an inquiry, the petitioner was once again put back in possession. He thereafter erected his walls.

10. As submitted by learned counsel for the petitioner, the wall as well as the gate, as noticed by the Trial Court, have been removed and now the entire plot is in the possession of the petitioner.

11. The question as to whether the petitioner is in complete possession or not is something that the Trial Court would determine after a Written Statement is filed by the respondents. The Trial Court by the impugned order appears to have prejudged the issue.

12. Petitioner has not sought any amendment of the plaint, so there is no question of the Trial Court directing the petitioner to amend the plaint unless the need so arises. In case the Trial Court after the respondent is served and files a written statement, comes to the conclusion that the suit is not maintainable in its present form and at that stage it is for the Trial Court to take a view as to whether to

permit the petitioner to amend the suit or dispose of the same in view of the aforesaid defect.

13. Keeping in view the categorical averments made by the petitioner in the plaint that he is in possession, impugned order cannot be sustained. Accordingly, the impugned order dated 25.08.2020 is set aside.

14. The Trial Court is directed to issue summons to the respondents/defendants in the Suit and after their pleadings are brought on record, take a view in the matter.

15. Petition is, accordingly, allowed in the above terms.

16. It is clarified that this court has neither considered nor expressed any opinion on the merits of the contentions of the petitioner. All rights and contentions of the parties is reserved.

17. Copy of the Judgment be uploaded on the High Court website and be also forwarded to learned counsel through email by the Court Master.

**OCTOBER 23, 2020**  
**st**

**SANJEEV SACHDEVA, J**